

## **Licensing requirement for Property Management**

Draft submitted for discussion purposes only by Kim Coster, Administrative Attorney for the Idaho Real Estate Commission

### **ISSUES:**

- I. Same license as broker? Or allow limited Property Management license
- II. What or who will be exempted from licensing requirement
- III. Trust Accounts – How many for Property managers? (rents AND security deposits?)
- IV. Agency Representation

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- I. Whether to (A) require that persons engaged property management be licensed as a broker/salesperson? or (B) to provide for a “limited license” for persons who engage exclusively in property management?

#### **A. One license as Broker or salesperson.**

- i. Already-licensed persons may engage in leasing and/or property management activities under a broker’s license. No additional requirements.
- ii. Unlicensed property managers will be required to either (a) obtain a broker license, (b) obtain a salesperson license and associate with a brokerage, with the brokerage essentially taking over the supervision, control and responsibility for

the business (record keeping and trust accounts); or (c) act as unlicensed assistants for the brokerage, but again, the brokerage would take over the supervision, control and responsibility for the business.

Q: To what extent would unlicensed property managers be able to work for the broker as unlicensed assistants? (Which activities may they perform?)

**B. Separate, “limited/restricted license” for property management.**

1. Allow a separate limited license for “qualified” persons to engage in property management and leasing in conjunction with the properties that are managed.
  - i. Stand-alone leasing activity not authorized under this limited license; an Idaho broker license is required for leasing of Idaho property.
  - ii. Law will distinguish “property management” from “leasing.”
  - iii. Practical matters: Unless the brokerage managing the property, the brokerage may not engage in leasing (or advertise leasing) of Idaho property without an Idaho license.

[Assumption: brokerages involved in leasing non-residential commercial property do not also engage in the management of those properties.]

2. **Alternative limited/restricted license:** A separate “limited license” for management of residential properties, only.
  - i. Would need to define “residential properties” but this should not be difficult.

ii. Broker license required for property management of non-residential property

iii. What about out-of-state “investment management” firms?

*Could* provide that an Idaho property management license is NOT required for management activities conducted outside the state, provided owner has agreed in writing (i.e., if owner agrees to have deposits and rents sent to property manager outside the state, IREC does not want or get to oversee.)

**3. Education Requirement – will there be one?** If a separate “limited license” for property management, will there also be pre-license education? a state exam? Continuing education?

Or, could be subject to (1) background check, including negative licensing histories and criminal histories; (2) trust account & recordkeeping requirements; and (3) licensing fees – sufficient to cover costs of enforcement/audit, making info accessible to public, etc.

**II. What or who will be exempted from the licensing requirement for property management?**

Common exemptions are:

- a. Property owners (including a corporation, partnership, or limited liability company acting through its officers, partners, managers, or regular employees receiving no additional compensation therefor) not required to be license to manage their own property
- b. All other exemptions to licensure listed in I.C. § 54-2003
- c. Hotel & motel management
- d. Rental of tourist accommodations (for less than 30 consecutive days)
- e. Mineral rights, oil & gas, if separate from sale of real property
- f. Acts performed by an officers or employees of a federal or state agency, political subdivision thereof, performed within the scope and course of authority or employment (this would apply, e.g., to Section 8 housing, where government is not owner, but subsidizes rent and contracts with owner)
- g. Acts performed for a common-interest community (e.g., homeowners' associations, condominium associations, etc.)
- h. Person who acts as property manager for a property, if the person maintains an office on the property, or resides on the property, and does not engage in property management with regard to any other property. (This is the "live in" property manager, who does not fit the definition of "regular employee" of the owner, but serves in that same function.

**III. Recordkeeping and Trust Accounting**

- a. When are separate "property management" trust accounts not required?
  - 1. Not required where funds received for property management services incidental to listing or sale of property, broker not required to set up property management fund; or

2. Where receipt of such funds is occasional and broker is not regularly engaged in property management activities. (funds still deposited in trust account and appropriate record kept).

**IV. Agency Representation**

**a. Does the Brokerage Representation Act (54-2082 et seq.) Apply?**

**The regulated transaction here is the property management agreement between the PM and the Owner. IREC is not involving itself in the landlord-tenant contract or relationship, other than it bears on the duties to the Owner. It would seem that the Brokerage Representation Act has no application here (it would apply to a brokerage's agreement to lease.)**